

## REMARKS

### Request for Reconsideration

Applicants have carefully considered the matters raised by the Examiner in the outstanding Office Action but remain of the opinion that patentable subject matter is present. Applicants respectfully request reconsideration of the Examiner's position based on the above amendments to the claims, the attached Declaration and the following remarks.

### Telephone Interview

Applicants' below-signed representative would like to thank Examiner Perreira for the courtesies extended to him during the Telephone Interview on October 2, 2008 with respect to the above-identified case.

As discussed during the Interview and as brought out in the Examiner's Interview Summary Record, the Examiner suggested providing a comparison between PEGylated liposomes and the liposomes made in accordance with Otaka. Such a suggestion is appreciated by the Examiner and has been adopted herein. Specifically, the Declaration attached hereto, compares liposomes made in accordance with Otaka versus liposomes that are made in accordance with the present Invention using either a

phospholipid modified with a polyalkylene oxide or a compound containing a polyoxyalkylene group. Specifically, the Examiner's attention is directed to Table 5 as attached to the Declaration. It can be seen that in a liposome which contains either a phospholipid modified with a polyalkylene oxide or a compound containing a polyoxyalkylene group in combination with the phospholipid, results in increased inclusion of the iodine compound. Furthermore, it should be noted that the increase in inclusion is an increase by a factor of 1 1/2 to 2 times that which is shown by Otaka. Respectfully, the amount of increased inclusion exceeds experimental error. Furthermore, the Prior Art does not teach or suggest that the addition of either a phospholipid modified with a polyalkylene oxide or a compound containing a polyoxyalkylene group in the liposome result in increased inclusion of the encapsulated substance. Such increased encapsulation is neither taught nor suggested in any of the cited references. As brought out in more detail below, the claims have been amended herein to recite this novel aspect of the present Invention.

#### Claims Status

Claims 21-46 are pending in this Application. Claim 21, which is the independent claim herein, has been amended herein to recite that in mixing the components to make up the liposome,

at least one compound selected from the group consisting of a phospholipid modified with a polyalkylene oxide or a compound containing a polyoxyalkylene group is included. This limitation had been in Claim 25 and Claim 25 has also been amended. Claim 21 has further been amended to add the limitation that the resulting liposome had substantially no chlorinated solvent. Support for the limitation "substantially no chlorinated solvent" can be found in paragraph 10 of the published U.S. Application corresponding to this Application.

Claims 22, 26, 39, 40 and 41 have been amended herein because of the amendments made to Claim 21.

Finally, Claim 27 has been amended herein to more particularly point out that the contrast medium comprised liposomes which are comprised of a vesicle of a phospholipid. Respectfully, no new matter has been added by way of these amendments.

#### Prior Art Rejection

In the Final Rejection, the Examiner put forward three Prior Art rejections, namely, Claims 21-43 had been rejected as being unpatentable over Otake or Castor in view of Sachse and Mackeness; Claims 21-42, 44 and 45 had been rejected as being

unpatentable over a combination of Otake or Castor in view of Sachse and Klaveness; and Claim 27 had been rejected as being anticipated by Na.

As noted above, Claim 21, upon which all the other claims depend, has been amended herein to recite that the liposome is made with a compound selected from the group consisting of a phospholipid modified with a polyalkylene oxide and a compound containing a polyalkylene group. As noted above, none of the references teach such an addition to the liposome or the fact that including such in the liposome will result in increased inclusion of the encapsulated compound.

Respectfully, the claims, as presented herein, are patentable over the cited references taken alone or in combination.

#### Double Patenting Rejection

Claims 21, 22 and 26 had been provisionally rejected on non statutory obviousness-type double patenting based on Claims 1, 4, 6, 8-10 and 19 of copending Application 11/180,849; and Claims 21, 22, 25 and 27 had been provisionally rejected on the non statutory obviousness-type double patenting based on Claims 1, 5-8, 10-12 and 14-17 of copending Application 11/187,397.

It is respectfully requested that these double patenting rejections be held in abeyance until such time as there is an indication of allowable subject matter. At that time, Applicants will consider filing Terminal Disclaimers.

**Claim 46**

Claim 46 had been withdrawn in the prior Office Action on the basis that it was drawn to subject matter that was distinct from the present Application. As noted above, Claim 21 has been amended herein to go back to the original wording of "substantially no chlorinated solvent". In light of this amendment, it is respectfully submitted that Claim 46 should be rejoined because it is no longer inconsistent with Claim 21.

**Request for One-Month Extension of Time**

Applicants hereby petition for a one month extension of time within which to respond to the outstanding Office Action. The appropriate government extension fee is being paid concurrently herewith. Should any additional fees or extensions of time be necessary in order to maintain this Application in pending condition, appropriate requests are hereby made and authorization is given to debit account #02-2275.

Conclusion

In view of the foregoing and the enclosed, it is respectfully submitted that the Application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,  
LUCAS & MERCANTI, LLP

By: Donald C. Lucas  
Donald C. Lucas, Reg. # 31,275  
(Attorney for Applicant)  
475 Park Avenue South  
New York, New York 10016  
Tel. # (212) 661-8000

DCL/mr

Attached: Executed Declaration of Mr. Akihisa NAKAJIMA  
signed on November 17, 2008